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No. 92-9059

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

JONATHAN DALE SIMMONS,

Petitioner,

vs.

SOUTH CAROLINA,

Respondent.

ON WRIT OF CERTIORARI
TO THE SUPREME COURT OF SOUTH CAROLINA

AMICI CURIAE BRIEF OF DONNA L. MARKLE AND PATRICIA ANN KNIPFER IN SUPPORT OF PETITIONER

WILLIAM C. PELSTER
Attorney for Amici Curiae
919 Third Avenue
New York, New York 10022
(212) 735-3000

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QUESTIONS PRESENTED

The questions presented by this case are:

1.

In this capital case, did the trial court's refusal to inform the sentencing jury that petitioner could never be paroled if sentenced to life imprisonment violate his due process right to rebut the prosecution's case for death, where the state argued that petitioner would pose a grave risk of future violence unless he was executed, and where the jury specifically asked about the possibility of parole?

2.

Does the Eighth Amendment entitle a capital defendant to have the sentencing jury informed, as a reason not to impose the death penalty, that under state law the jury's sentencing alternative of "life imprisonment" means life without the possibility of parole?

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MOTION BY DONNA L. MARKLE AND
PATRICIA ANN KNIPFER FOR LEAVE
FILE A BRIEF AS AMICI CURIAE

Pursuant to Supreme Court Rule 37, Donna L. Markle and Patricia Ann Knipfer move for leave to file the brief submitted herewith as amici curiae.

Counsel for the Petitioner has consented to the filing of the brief, but counsel for the Respondent has refused consent.

Donna L. Markle and Patricia Ann Knipfer (hereinafter the "amici") are former jurors in a capital case who were denied the right to have information concerning the meaning of the life sentence alternative. In the case in which the amici served, the life sentence would have been life without the possibility of parole. Thus, the experience of the amici was similar to the experience of the jurors in the case before the Court.

The amici are particularly interested in this case because it

presents matters of concern to ordinary citizens who are called upon to serve as jurors in capital cases. The amici believe that the filing of their brief amici curiae is desirable because it presents to the Court significant information, based upon a unique perspective, concerning the issues presented in this case. The interests of the amici are different from those of the parties in that they, as jurors, were called upon to make the ultimate decision of whether a person should live or die, a decision with which they must live forever. The amici feel that the state should not call upon citizens to make that decision and then

systematically withhold from them information that they would consider highly relevant to their sentencing decision.

The amici believe that their brief will substantially assist this Court by providing it with a different perspective from which to evaluate the facts of this case. Accordingly, the amici repsectfully request the Court to grant this motion for leave to file an amici curiae brief.

Dated: November 15, 1993

Respectfully submitted,

William C. Pelster

William C. Pelster
Attorney for the Amici Curiae
and Counsel of Record
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New York, New York 10022
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BRIEF AMICI CURIAE OF DONNA L. MARKLE AND PATRICIA ANN KNIPFER IN SUPPORT OF PETITIONER

Donna L. Markle and Patricia Ann Knipfer, former capital jurors, submit this brief as *amici curiae*, pursuant to Rule 37 of the Court's rules, to assist the Court in determining whether the Eighth Amendment entitles a capital defendant to have the sentencing jury informed, as a reason not to impose the death penalty, that under state law the jury's sentencing alternative of "life imprisonment" means life without the possibility of parole.

STATEMENT OF INTEREST OF AMICI CURIAE

This brief is filed on behalf of former jurors in capital sentencing proceedings who were denied accurate information regarding the meaning of the life sentence alternative. In the capital case in which these jurors served, the life sentence alternative would have been a life sentence without the possibility of parole. Denied that information, and operating on the commonly-held assumption that a life sentence carries the possibility of parole after a period of years, the jury sentenced the defendant to death. In doing so, they relied partly on the state's argument that the defendant would otherwise constitute a continuing threat to society. Had they been given accurate information regarding the nature of the life sentence alternative, that information would have been highly material to their decision regarding punishment.

These jurors may be called upon to serve again, and they are concerned that the situation described herein should not be allowed to recur, either to themselves or to other jurors in capital cases. They respectfully submit that their perspective on the question presently before the Court is unique, a perspective that the parties to this litigation cannot properly bring to the Court's attention. The *amici* are not attorneys, institutions or legal organizations and have no real interest in the ultimate outcome of the case before the Court. Their interest in this matter is the interest of ordinary citizens who are called upon serve on capital juries and who, in that capacity, desire to know the full truth about the choices they must face.

The *amici* respectfully ask the Court, in weighing the interests of the parties and determining the questions presented by this case, to also take into account the concerns of citizens such as themselves, who are called upon to decide the ultimate question of whether a fellow man or woman should live or die.

ARGUMENT

Donna L. Markle and Patricia Ann Knipfer served as jurors in the Virginia trial of Dennis Wayne Eaton, who was was tried and convicted of capital murder in the Circuit Court for the County of Rockbridge, Fauquier, Virginia, in November 1989. Before trial, Mr. Eaton pleaded guilty to three additional murders. As a result of those guilty pleas, pursuant to Va. Code Ann. § 53.1-151 B1, he would never have been eligible to be considered for parole had he been sentenced to life imprisonment. During the sentencing phase of the trial, the prosecutor argued that Mr. Eaton should be sentenced to death because he otherwise would commit acts of violence that would constitute a continuing threat to society. However, under an archaic state law Mr. Eaton was prevented from informing the jury of his ineligibility for parole if he were sentenced to life imprisonment. Unaware of the true meaning of the life sentence, the jury sentenced Mr. Eaton to death on the statutory ground of his "future dangerousness" to society.

The *amici* did their duty in rendering a sentencing verdict based on the evidence and on the law that they were given. Now, as part of the burden of their civic service, they must live for the rest of their lives with the memory of the irrevocable decision they made in the jury room. This is not, in a capital case, an easy thing to do. But what has happened in the *Eaton* case has made it much harder. For after participating in the decision to put Mr. Eaton to death, the *amici* learned that his "future dangerousness" had been systematically exaggerated in the courtroom by the state's withholding from the jury the crucially important fact that he would never have been eligible for parole if the jury had let him live.

The potential effect on Mr. Eaton of this manipulation of the jury's sentencing decision is obvious. But he is not the only one adversely affected. The *amici*, as jurors who assumed personal responsibility for recommending his execution, also feel the impact of what occurred. Having learned of his parole ineligibility only after ordering his death, it is now much harder to

believe that they did the right thing. And because what they did involved choosing death over life, this doubt can be a substantial burden to bear.

This Court has repeatedly recognized that jurors in capital sentencing proceedings serve in one of the most difficult capacities in the criminal justice system. *See, e.g., Franklin v. Lynaugh*, 487 U.S. 164, 179 (1988) (referring to "the awesome power that a sentencing jury must exercise in a capital case"); *Caldwell v. Mississippi*, 472 U.S. 320, 329 (1985) ("this Court's Eighth Amendment jurisprudence has taken as a given that capital sentencers would view their task as the serious one of determining whether a specific human being should die at the hands of the State"); *McGautha v. California*, 402 U.S. 183, 207 (1971) (referring to "the truly awesome responsibility of decreeing death for a fellow human" that is imposed upon capital jurors). This "awesome responsibility" carries with it certain inherent emotional and pyschological strain that is often overlooked by a criminal justice system concerned primarily with lawyers, defendants and judges.[1] Recent studies have indicated that jurors who have made the decision to sentence a defendant to death experience extreme emotional disturbances, sometimes for years afterward, as a result of having made that decision. *See generally* Leigh B. Bienen, *Helping Jurors Out: Post-Verdict Debriefing for Jurors in Emotionally Disturbing Trials*, 68 Ind. L.J. 1333 (1993) (reporting results of various studies and suggesting that post-trial jury counseling may be needed in some cases).[2]

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[1] As one judge in Howard County, Maryland aptly noted in discussing the effects of capital cases on jurors, "jurors . . . have kind of been the forgotten men and women of the criminal justice system." *See* Graciella Sevilla & Dan Beyers, *For Jurors, Grisly Trials Can Take Toll; Panel in Basu Carjacking Case Undergoes "Stress Debriefing"*, Washington Post, Aug. 20, 1993, at C1.

[2] Only recently has attention turned to the impact of capital trials on the jurors. Not surprisingly, those studies that have been done have concluded, as Bienen reports, that "[j]urors in capital cases, and jurors who actually choose the death penalty, may feel the burdens of this responsibility especially keenly." 68 Ind. L.J. at 1340. *See also* Kate Darby Rauch, *Some Juries Form Bonds That Last*

(Footnote continued)

As one commentator has noted, "[c]ommon sense suggests that virtually any person given the responsibility of determining whether a convicted murderer should be condemned to death or sentenced instead to life imprisonment would want information about what 'life' imprisonment really means." *See* William W. Hood, III, Note, *The Meaning of "Life" for Virginia Jurors and Its Effect on Reliability in Capital Sentencing*, 75 Va. L. Rev. 1605 (1989). It is simply wrong to subject jurors to the singularly difficult task of deciding whether a person should be executed and then to systematically withhold from them highly relevant information about the alternative sentence. Yet this is exactly what happened to the *amici*, and to the jurors in this case. *See Morgan v. Illinois*, 112 S. Ct. 2222, 2231 n.6 (1992) ("juries must be allowed to consider on the basis of all relevant evidence not only why a death sentence should be imposed, but also why it should not be imposed") (citations and quotations omitted); *Walton v. Arizona*, 497 U.S. 639, 653 (1990) ("When a jury is the final sentencer, it is essential that the jurors be properly instructed regarding all facets of the sentencing process.").

The thoughts and feelings of the *amici*, of course, are no longer relevant to the judicial process: their jury service is over, and that is that. But they must live with their own feelings for the rest of their lives. It is no small thing to realize that one may have ordered the execution of a man who could and perhaps should have been spared. And it is no small thing that the state, without any good reason that the *amici* can see, has put its own citizens in so difficult a position. Jury service involves many sacrifices, but it should not require this.

In addition to the above concerns, there is another reason why capital juries in cases such as this one should be given accurate

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Beyond the Trial, Washington Post, Apr. 14, 1992, at Z10 (reporting that Washington jurors who sentenced Westley Alan Dodd to death experienced long-term emotional difficulties); Daniel Goleman, *For Many Jurors, Trials Begin After the Verdict*, N.Y. Times, May 14, 1991, at C1 (reporting study which concluded, *inter alia*, that "factors that made jurors more likely to have stress symptoms included having to rule on a death sentence. . . .").

information regarding the alternative life sentence. The use of juries in criminal cases, in addition to providing a group of peers to stand between the accused and the state, *Duncan* v. *Louisiana*, 391 U.S. 145 (1968), also serves the very important purpose of allowing the citizenry to play an active role in the functioning of their government. *Batson* v. *Kentucky*, 476 U.S. 79, 87 (1986); *Balzac* v. *Porto Rico*, 258 U.S. 298, 310 (1922). As this Court explained in *Powers* v. *Ohio*, 111 S. Ct. 1364, 1366 (1991), "[j]ury service is an exercise of responsible citizenship by all members of the community, including those who otherwise might not have the opportunity to contribute to our civic life." The Court continued:

> The opportunity for ordinary citizens to participate in the administration of justice has long been recognized as one of the principal justifications for retaining the jury system. . . . [T]he institution of the jury raises the people itself . . . to the bench of judicial authority [and] invests the people . . . with the direction of society. . . . The jury system postulates a conscious duty of participating in the machinery of justice. . . . One of its greatest benefits is in the security it gives the people that they, as jurors actual or possible, being part of the judicial system of the country can prevent its arbitrary use or abuse. . . . Jury service preserves the democratic element of the law, as it guards the rights of the parties and insures continued acceptance of the laws by all of the people. . . . It affords ordinary citizens a valuable opportunity to participate in a process of government, an experience fostering, one hopes, a respect for the law. . . . Indeed, with the exception of voting, for most citizens the honor and privilege of jury duty is their most significant opportunity to participate in the democratic process.

Id. at 1368-1369 (numerous citations and quotations omitted).

As with any other "democratic process," however, those who participate in jury service may not do so meaningfully if they

are systematically deprived of basic information regarding the alternatives they face. *Cf. Richmond Newspapers, Inc.* v. *Virginia*, 448 U.S. 555 (1980). Thus, where capital jurors are deprived of accurate information regarding the meaning of the sentencing alternatives, they are simply unable to consciously and intelligently participate in the "machinery of justice." Such denial limits the ability of those citizens to participate the processes of their government, harming not only the litigants themselves, but also the jurors and the community at large. *See Batson*, 476 U.S. at 87. It interferes with public participation in the processes of government, deprives jurors of the ability to prevent arbitrariness in the judicial system and undermines "respect for the law."

While the state may have some interest in concealing the truth from jurors, the *amici* simply cannot imagine what that interest might be in the present situation. Whatever interest the state may claim, however, the *amici* submit that they, too, are citizens of this Nation, and they respectfully request that in conducting whatever balancing the Court may do in this case their interests, concerns and experiences be taken into account, as well.

CONCLUSION

In deciding whether the Constitution requires that the capital sentencing jury be told that a life sentence would mean life without the possibility of parole, the Court should take into account, in addition to the arguments presented by the parties to this case, the interests of ordinary citizens who are called upon to serve as jurors and to make the ultimate life-or-death decision.

Dated: November 15, 1993

Respectfully submitted,

William C. Pelster

WILLIAM C. PELSTER
Attorney for the Amici Curiae
and Counsel of Record
919 Third Avenue
New York, New York 10022
(212) 735-3000